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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,838	11/13/2003	Preston A. Tanner	A310170.IUS	9505

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EXAMINER

DURAND, PAUL R

ART UNIT PAPER NUMBER

3721

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/712,838	Applicant(s) TANNER, PRESTON A.	
	Examiner Paul Durand	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 22-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/27/2005 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 23-25 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 23 recites the limitation "rubber body extension" in claim 23. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clifford et al (US 3,711,008) in view of Copeland (US 329,278).

In regard to claim 21, Clifford discloses the invention substantially as claimed including a body 2, with a longitudinal reference axis, (no number given, but generally along the center of the body), upper and lower ends with a longitudinal axis, a longitudinal aperture 52, with lower and upper portions, which extends through the body and along the reference axis and correspond to the lower and upper ends of the body, the lower portion having a carpet tack accommodating portion in the form of guide track 28, orientated along the axis, and receiving carpet tacks 22, a striker pin in the form of drive head 38, which is hit by the hammer 44 located inside the longitudinal aperture, moving reciprocally along the reference axis, a tack strip track assembly, generally indicated by housing 3, disposed on the lower end of the body, comprised of a footplate (no number given, but generally by reference number 3), having a base portion in the form of spacer 5, which engages a support surface (no number given, but generally indicated by the floor in figure 1), guide channel 8, accommodating tack strip 6, and parallel to an adjacent surface (such as a wall), where the strip is to be installed, a spacer portion comprised of the width of spacer 5, which is disposed adjacent the channel 8, and extends laterally a predetermined distance terminating generally at planar surface 4 orientated parallel the guide channel, the track assembly is engaged by the installation device, and a nail 22 is driven into the track by the impact of the driving pin (see Figs. 1,2 and C2,L35 – C4,L17). What Clifford does not disclose is the use of an integral driving pin with a striking head located outside the body portion.

However, Copeland teaches that it is old and well known in the art of member driving to have an integrated striking pin, comprised of shaft "a", located in the longitudinal body aperture and movable along the longitudinal axis, with a head "a8" which is located outside of a body portion for striking for the purpose of efficiently driving a fastener (see Figs. 1-3).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the tool of Clifford with the driving means as taught by Copeland for the purpose of efficiently driving a fastener.

6. Claim 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clifford et al and Copeland as applied to claim 1, in view of Hilti (US 3,324,542).

In regard to claim 23, the modified invention of Clifford discloses the invention substantially as claimed as applied to claim 22 above except for the use of a rubber extension attached to a second end of the body. However, Hilti teaches that it is old and well known in the art of member driving to have a handle (no number given), coaxially attached to a upper end of a guide body, where the top of the handle and the bottom of spacer in the form of flange 28 limit the size of the tool for the purpose of reducing shock during use (see Figs. 1-3 and C2,L44-68). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the modified tool of Clifford with the handle means as taught by Hilti for the purpose of reducing impact shock during use.

In regard to claims 24 and 25, the modified invention of Clifford, using Copeland, discloses the invention substantially as claimed including a retaining pin "a4", which

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retains a striker pin "a", with spring "a5" arranged between the shaft head "a8" and the pin (see Copeland Fig.2). Furthermore, while Copeland discloses the use of a pin, the examiner take Official Notice that it would be obvious in the art to provide a retaining washer in lieu of a retaining pin for the purpose of retaining a driving pin. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the modified tool of Clifford with the spring and retaining means as taught by Copeland for the purpose of retaining and reciprocating a driving pin.

7. Claims 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clifford et al and Copeland as applied to claim 1 and in further view of Henning (US 3,060,441).

The modified invention of Clifford discloses the invention substantially as claimed as applied to claim 22 above except for a handle located on a portion of the body. However, Henning teaches that it is old and well known in the art of member driving to have a handle 33, immovably located between a first and a second portion of the body, with a foot portion 31 and comprised of shock absorbing material (rubber) for the purpose of reducing impact shock during use (see Fig.3 and C4,L12-14 and L64-72). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the modified tool of Clifford with the handle means as taught by Henning for the purpose of reducing impact shock during use.

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**Conclusion**

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Durand whose telephone number is 571-272-4459. The examiner can normally be reached on 0730-1800, Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Paul Durand  
September 29, 2005

  
Stephen F. Gerrity  
Primary Examiner